

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

VICTOR NOEL,)
)
Plaintiff,)
)
vs.)
)
CARSON SMITHFIELD, LLC,)
)
Defendant.)

COMPLAINT

INTRODUCTION

1. Plaintiff Victor Noel brings this action to secure redress from unlawful collection practices engaged in by defendant Carson Smithfield, LLC. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”).

VENUE AND JURISDICTION

2. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331 and 28 U.S.C. §1337.

3. Venue and personal jurisdiction in this District are proper because:

- a. Part of the acts and transactions at issue occurred here; and
- b. Defendant does or transacts business within this District.

PARTIES

4. Plaintiff Victor Noel is an individual who resides in New York, from whom defendant attempted via direct communications to collect a delinquent consumer debt, consisting of a Merrick Bank credit card, despite the fact that plaintiff was represented by counsel with respect to such debt.

5. Defendant Carson Smithfield, LLC is a limited liability company organized under Delaware law with offices at 101 Crossways Park Drive West, Woodbury, New York 11797 and 225 West Station Square Drive, Pittsburgh, PA 15219.

6. Defendant Carson Smithfield, LLC does business in Illinois. See Secretary of State printout attached as Exhibit A.

7. Defendant Carson Smithfield, LLC has a collection agency license from the Illinois Department of Financial and Professional Regulation (Exhibit B).

8. Defendant Carson Smithfield, LLC conducts a national debt collection business, seeking to collect consumer debts from numerous persons within the Northern District of Illinois.

9. The sole manager of Carson Smithfield, LLC is CardWorks, Inc., an inactive New York corporation also located at 101 Crossways Park Drive West, Woodbury, New York 11797. CardWorks, Inc., also owns 100% of the equity of Carson Smithfield, LLC.

10. The principal executive officer of CardWorks, Inc., is Donald M. Berman.

11. Cardworks Servicing, LLC is a limited liability company organized under Delaware law with offices at 101 Crossways Park Drive West, Woodbury, NY 11797 and 225 West Station Square Drive, Pittsburgh, PA 15219.

12. The principal executive officer of Cardworks Servicing, LLC is the same Donald M. Berman.

13. Carson Smithfield, LLC is engaged in the business of using the mails and telephone to collect consumer debts originally owed to others.

14. Carson Smithfield, LLC is a debt collector as defined in the FDCPA.

15. Cardworks Servicing, LLC is or was also engaged in the business of using the mails and telephone to collect consumer debts originally owed to others.

16. Cardworks Servicing, LLC is or was also a debt collector as defined in the FDCPA.

FACTS

17. Plaintiff is a senior citizen with limited assets and income who fell behind on his bills, including a Merrick Bank credit card (account number ending in "3161"), incurred for

personal, family or household purposes and not for business purposes.

18. Plaintiff sought the assistance of Chicago attorney Jerome S. Lamet in connection with his financial difficulties.

19. On or about February 24, 2009, Cardworks Servicing sent plaintiff the letter attached as Exhibit C seeking to collect the 3161 account.

20. On or about April 9, 2010, Cardworks Servicing sent plaintiff the letter attached as Exhibit D seeking to collect the 3161 account.

21. On or about April 23, 2010, counsel wrote to Cardworks Servicing advising that plaintiff was represented in connection with the 3161 account. A copy of the letter and fax transmission receipt is attached as Exhibit E.

22. On or about September 11, 2012, Carson Smithfield, LLC sent plaintiff, directly, the letter attached as Exhibit F, seeking to collect the same debt.

23. Because of the relationship of Carson Smithfield, LLC and Cardworks Servicing, LLC, Carson Smithfield, LLC was charged with knowledge that plaintiff was represented.

COUNT I – FDCPA

24. Plaintiff incorporates paragraphs 1-23.

25. Defendant violated 15 U.S.C. §1692c by contacting a represented party directly.

26. Section 1692c provides:

§ 1692c. Communication in connection with debt collection

(a) Communication with the consumer generally. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

... (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; ...

WHEREFORE, the Court should enter judgment in favor of plaintiff and against defendant for:

- (1) Statutory damages of \$1,000 per account;
- (2) Attorney's fees, litigation expenses and costs of suit;
- (3) Such other and further relief as the Court deems proper.

s/Daniel A. Edelman
Daniel A. Edelman

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NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

s/Daniel A. Edelman
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